

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

NICHOLAS A. USLER, JON EVANS, §  
ANDREW ANDRADA, HANNAH VOSSEN, §  
NOAH TANZ, KENNY KIERMAN, §  
CHARLES SANKOWICH, BURCU KARACA, §  
and KARA GOZDE, §  
§

Plaintiffs, §  
§

v. §

1:21-CV-447-RP

VITAL FARMS, INC., MATTHEW O'HAYER, §  
RUSSELL DIEZ-CANSECO, and §  
SCOTT MARCUS, §  
§

Defendants. §

**ORDER**

Before the Court is the report and recommendation of United States Magistrate Judge Mark Lane concerning Defendant Vital Farms, Inc.'s ("Vital Farms") Motion to Dismiss Under Federal Rules of Civil Procedure 12(b)(6) and 9(b), (Dkt. 17), Defendants Matthew O'Hayer, Russell Diez-Canseco, and Scott Marcus's (the "Individual Defendants") Motion to Dismiss Under Federal Rules of Civil Procedure 12(b)(6) and 9(b), (Dkt. 18), Plaintiffs' Consolidated Response, (Dkt. 22), and Vital Farms and the Individual Defendants' Consolidated Reply, (Dkt. 23). (R. & R., Dkt. 26). In his report and recommendation, Judge Lane recommends that the Court deny Vital Farms' motion and grant the Individual Defendants' motion. (*Id.* at 16). Vital Farms timely filed objections to the report and recommendation, (Objs., Dkt. 27), and Plaintiffs filed a response, (Resp. Dkt. 28).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Vital Farms timely objected to the report and recommendation, the Court

reviews the report and recommendation *de novo*. Having done so, the Court overrules Vital Farms' objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Mark Lane, (Dkt. 26), is **ADOPTED**.

**IT IS ORDERED** that Vital Farms' motion, (Dkt. 17), is **DENIED**.

**IT IS FURTHER ORDERED** that the Individual Defendants' motion, (Dkt. 18), is **GRANTED**. All claims against Defendants Matthew O'Hayer, Russell Diez-Canseco, and Scott Marcus are **DISMISSED**.

**SIGNED** on March 2, 2022.

  
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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE